No. 80-1854

In The

Supreme Court of the United States

October Term, 1980

CECIL A. BENJAMIN,

Petitioner,

vs.

FRANK J. MACCHIAROLA, Individually and as Chancellor of the Board of Education of the City of New York and the BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONER

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Benjamin was never served with reasons for his discontinuance as principal. Like the protagonist in Franz Kafka's *The Trial,* he was never officially notified of the reasons for the adverse action against him. He contends, however, that his role in seeking the termination of Chamberlain and Gregor for incompetence and misconduct (not for participating in an unlawful strike as assumed by the Second Circuit Court of

Appeals) was the reason for his own dismissal. Benjamin's opposition to Gregor's complaint to the New York State Division of Human Rights accusing Benjamin of discrimination against him because of color and because of provisions of the Taylor Law pertaining to teachers who strike, played a substantial role in Benjamin's retaliatory termination as principal. The retaliatory dismissal of Benjamin for his activities before the Division of Human Rights was for constitutionally-protected conduct in the exercise of his First Amendment right of freedom of speech. *Mt. Healthy City School District Board of Education v. Doyle,* 429 U.S. 274, 281. However, Chamberlain and Gregor had the full support of active members of the United Federation of Teachers who were determined to oust Benjamin.

Respondents mistakenly assert they offered Benjamin an opportunity for administrative review prior to his commencement of proceedings for judicial review on July 25, 1978. Their undated letter asserting readiness to "heat" the matter was mailed to Benjamin two days later on July 27, 1978.

Respectfully submitted,

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